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O.C., Appellant)	
)	
and)	Docket No. 22-0026
)	Issued: May 9, 2022
DEPARTMENT OF HOMELAND SECURITY,)	
IMMIGRATION & CUSTOMS)	
ENFORCEMENT, Brunswick, GA, Employer)	
)	

Case Submitted on the Record

Before:
ALEC J. KOROMILAS, Chief Judge
JANICE B. ASKIN, Judge
VALERIE D. EVANS-HARRELL, Alternate Judge

On October 1, 2021 appellant filed a timely appeal from a July 23, 2021 merit decision of the Office of Workers' Compensation Programs (OWCP). Pursuant to the Federal Employees' Compensation Act¹ (FECA) and 20 C.F.R. §§ 501.2(c) and 501.3, the Board has jurisdiction over the merits of the case.

The issue is whether appellant has met his burden of proof to establish entitlement to continuation of pay (COP).

On January 8, 2021 appellant, then a 44-year-old training instruction employee, filed a traumatic injury claim (Form CA-1) alleging that on December 10, 2020 he contracted COVID-

¹ 5 U.S.C. § 8101 *et seq.*

19 when traveling to his new duty station while in the performance of duty. He indicated on the claim form that he was claiming COP. On the reverse side of the claim form, appellant's supervisor acknowledged that appellant was injured in the performance of duty.

In support of his claim, appellant submitted a rapid antigen test result dated December 10, 2020 prepared by Gabrel Crabb, a nurse practitioner, which indicated that he was positive for COVID-19.

In a development letter dated January 15, 2021, OWCP informed appellant that the evidence of record was insufficient to establish his claim. It advised him of the type of factual and medical evidence needed and provided a questionnaire for his completion. In a separate development letter of even date, OWCP requested that the employing establishment provide additional information, including comments from a knowledgeable supervisor and details regarding appellant's alleged COVID-19 exposure. It afforded both parties 30 days to submit the necessary evidence.

Appellant submitted e-mails dated November 12 and 18, 2021 which confirmed that he was selected for a detail in Glynco, GA and which detailed his travel plans.

OWCP received a laboratory report dated March 13, 2021 from Mr. Crabb, which indicated that appellant had undergone antigen testing. The test had reactive results which suggested recent or past infection of COVID-19.

In a letter dated March 16, 2021, OWCP informed appellant that his claim would be reviewed under the provisions of the newly enacted American Rescue Plan Act of 2021.

By decision dated June 7, 2021, OWCP denied appellant's claim for COVID-19.

On June 29, 2021 appellant requested reconsideration of OWCP's June 7, 2021 decision. In support of his request, he included a report dated December 10, 2020 from Mr. Crabb which indicated that appellant had just traveled from San Diego, CA and had undergone rapid COVID-19 antigen testing, which was positive for COVID-19.

By decision dated July 23, 2021, OWCP modified its decision dated June 7, 2021 and accepted appellant's claim for COVID-19. By separate decision of even date, it denied his claim for COP, finding that he had not reported his injury on an OWCP-approved form within 30 days of the accepted December 10, 2020 employment injury.

LEGAL PRECEDENT

Section 8118(a) of FECA authorizes COP, not to exceed 45 days, to an employee who has filed a claim for a period of wage loss due to a traumatic injury with his or her immediate superior on a form approved by the Secretary of Labor within the time specified in section 8122(a)(2) of

this title.² This latter section provides that written notice of injury shall be given within 30 days.³ The context of section 8122 makes clear that this means within 30 days of the injury.⁴

OWCP's regulations provide, in pertinent part, that to be eligible for COP, an employee must: (1) have a traumatic injury which is job related and the cause of the disability and/or the cause of lost time due to the need for medical examination and treatment; (2) file Form CA-1 within 30 days of the date of the injury; and (3) begin losing time from work due to the traumatic injury within 45 days of the injury.⁵

ANALYSIS

The Board finds that appellant has met his burden of proof to establish entitlement to COP.

OWCP found that appellant's claim for COP was untimely filed as he filed his claim more than 30 days after his December 10, 2020 employment injury. The Board finds, however, that appellant signed and submitted a CA-1 form for traumatic injury on January 8, 2021 within 30 days of December 10, 2020, the accepted date of injury. Appellant indicated on the January 8, 2021 claim form that he was claiming COP. Appellant's supervisor signed the CA-1 form and indicated that notice was received on January 8, 2021. As appellant's CA-1 form and claim for COP was filed within 30 days of injury, OWCP erred in denying his request for COP as untimely filed.⁶

The Board therefore will reverse the July 23, 2021 OWCP decision which denied appellant's entitlement to COP.

CONCLUSION

The Board finds that appellant has met his burden of proof to establish entitlement to COP.

² *Id.* at § 8118(a).

³ *Id.* at § 8122(a)(2).

⁴ *E.M.*, Docket No. 20-0837 (issued January 27, 2021); *J.S.*, Docket No. 18-1086 (issued January 17, 2019); *Robert M. Kimzey*, 40 ECAB 762-64 (1989); *Myra Lenburg*, 36 ECAB 487, 489 (1985).

⁵ 20 C.F.R. § 10.205(a)(1-3); *see also T.S.*, Docket No. 19-1228 (issued December 9, 2019); *J.M.*, Docket No. 09-1563 (issued February 26, 2010); *Dodge Osborne*, 44 ECAB 849 (1993); *William E. Ostertag*, 33 ECAB 1925 (1982).

⁶ *A.C.*, Docket No. 18-1176 (issued December 4, 2018); *see Bossy W. Anderson*, 41 ECAB 833 (issued June 20, 1990).

ORDER

IT IS HEREBY ORDERED THAT the July 23, 2021 decision of the Office of Workers' Compensation Programs is reversed.

Issued: May 9, 2022
Washington, DC

Alec J. Koromilas, Chief Judge
Employees' Compensation Appeals Board

Janice B. Askin, Judge
Employees' Compensation Appeals Board

Valerie D. Evans-Harrell, Alternate Judge
Employees' Compensation Appeals Board